

**§ 770.50 Entry restrictions.**

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Puget Sound Naval Shipyard, or remaining thereon by any person whoever for any purpose without the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, is prohibited. See 18 U.S.C. 1382; the Internal Security Act of 1950, section 21 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; Secretary of the Navy Instruction 551.36 of December 20, 1980; and Department of Defense Directive 5200.8 of July 29, 1980.

**§ 770.51 Entry procedures.**

(a) Any person or group of persons desiring the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Puget Sound Naval Shipyard, at the following address: Commander, Puget Sound Naval Shipyard, Bremerton, WA 98314.

(b) Each request for entry will be considered on an individual basis weighing the operational, security and safety requirements of Puget Sound Naval Shipyard with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of this request.

**§ 770.52 Violations.**

(a) Any person entering or remaining on Puget Sound Naval Shipyard, without the consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval \* \* \* reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation \* \* \* shall be fined not more than \$500.00 or imprisoned not more than six months or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed \$5000.00 or impris-

onment for not more than one (1) year or both as provided in 50 U.S.C. 797.

**Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire**

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011, 18 U.S.C. 1382; 50 U.S.C. 797; DOD Directive 5200.8 of July 29, 1980; 32 CFR 700.702; 32 CFR 700.714; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5530.14 of June 10, 1983; COMNAVSEASYS COMINST 5510.2A of June 19, 1981.

SOURCE: 49 FR 34003, Aug. 28, 1984, unless otherwise noted.

**§ 770.53 Purpose.**

To promulgate regulations and procedures governing entry upon Portsmouth Naval Shipyard, and to prevent the interruption of the functions and operations of Portsmouth Naval Shipyard by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard.

**§ 770.54 Background.**

(a) Portsmouth Naval Shipyard maintains and operates facilities "to provide logistic support for assigned ships and service craft; to perform authorized work in connection with construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of ships and craft, as assigned; to perform manufacturing, research, development, and test work, as assigned; and to provide services and material to other activities and units, as directed by competent authority."

(b) Portsmouth Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(c) For prevention of interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard, and prevention of injury to

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any such unsupervised person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Portsmouth Naval Shipyard to authorized persons only.

### § 770.55 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Portsmouth Naval Shipyard is vested with the Shipyard Security Manager (Code 830).

### § 770.56 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and civilian employees of the United States in the performance of their official duties, entry upon Portsmouth Naval Shipyard, or remaining thereon by any person for any purpose without the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, is prohibited. In many instances, Commander, Naval Sea Systems Command, approval is required.

### § 770.57 Entry procedures.

(a) Any person or group desiring the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Portsmouth Naval Shipyard, at the following address: Commander, Portsmouth Naval Shipyard, Portsmouth, NH 03801, Attention: Security Manager (Code 830). For groups, foreign citizens, and news media, the request must be forwarded to the Commander, Naval Sea Systems Command, for approval.

(b) Each request for entry will be considered on an individual basis, weighing the operational, security, and safety requirements of Portsmouth Naval Shipyard, with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

### § 770.58 Violations.

(a) Any person entering or remaining on Portsmouth Naval Shipyard without the consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall be sub-

ject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part:

Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . Shall be fined not more than \$500 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this instruction is subject to a fine not to exceed \$5000 or imprisonment for not more than one (1) year, or both, as provided by 50 U.S.C. 797.

## PARTS 771-774—[RESERVED]

## PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 4321-4361; 40 CFR parts 1500-1508.

SOURCE: 55 FR 33899, Aug. 20, 1990, unless otherwise noted.

### § 775.1 Purpose.

To supplement Department of Defense (DOD) regulations (32 CFR part 214) by providing policy and assigning responsibilities to the Navy and Marine Corps for implementing the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act (NEPA).

### § 775.2 Scope.

The policies and responsibility assignments of this part apply to the Office of the Secretary of the Navy, the Department of the Navy (DON), and

the Navy and Marine Corps operating forces and shore establishments. This part is limited to the actions of these elements with environmental effects in the United States, its territories, and possessions.

### § 775.3 Policy.

(a) The Department of the Navy will act with care to ensure that, in conducting its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This ensures that planning and decision-making reflect environmental values, avoid delays, and avoid potential conflicts. Care will be taken to ensure that, consistent with other national policies and national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DON shall:

(1) Assess environmental consequences of proposed actions that could affect the quality of the human environment in the United States, its

territories, and possessions in accordance with DOD and CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Use ecological information in planning and developing resource-oriented projects.

### § 775.4 Responsibilities.

(a) The Assistant Secretary of the Navy for Installations and Environment (ASN(I&E)) shall:

(1) Advise the Secretary of the Navy on DON policy regarding NEPA compliance.

(2) Be the principal point-of-contact with the CEQ, Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense for Environment (DASD(E)), other DOD components and federal agencies concerned with NEPA matters, and with private environmental groups as applicable.

(3) Direct and/or, upon recommendation, approve the preparation of Environmental Impact Statements (EIS); and, after preparation, approve and forward said statements to the EPA and DASD(E) for review and comment.

(4) Approve and forward to the Navy Judge Advocate General (JAG) Findings of No Significant Impact (FONSI) for publication in the FEDERAL REGISTER for those actions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the quality of the human environment and for which an EIS will not be prepared.

(5) Approve and forward to the Navy JAG, for publishing in the FEDERAL REGISTER, a Record of Decision (ROD) which will summarize for the public record the decision made by the Navy/Marine Corps among the alternatives presented in a Final EIS.

(6) Maintain liaison with the Chief of Information who will coordinate with the Assistant Secretary of Defense (Public Affairs) those environmental matters which have significant public affairs implications.

(7) Maintain liaison with the Office of Legislative Affairs who will coordinate with the Assistant Secretary of Defense (Legislative Affairs) and the Congress those environmental matters which have significant legislative implications.

(b) The Chief of Naval Operations, or his designee(s), and the Commandant of the Marine Corps, or his designee(s), are responsible, within their respective services, for NEPA compliance, which includes:

(1) Implementing DON policy regarding protection of the environment to include NEPA compliance.

(2) Advising commands of the requirement for submitting environmental assessments or impact statements and identifying major decision points in the chain of command where environmental effects shall be considered.

(3) Making decisions on environmental assessments as to whether a Finding of No Significant Impact is appropriate or preparation of an environmental impact statement is required.

(4) Coordinating, as appropriate, with CEQ, EPA, DASD(E), ASN(I&E), other DOD components and federal agencies concerned with environmental matters.

(5) Serving as the point of contact for DON environmental matters.

(6) Coordinating, as appropriate, with the Chief of Information for the release to the public of environmental assessments, impact statements, Findings of No Significant Impact, and other environmental documents, according to the Freedom of Information Act and other applicable federal laws.

(7) Providing assistance for actions initiated by private persons, state or local agencies and other non-DON/DOD

entities for which DON involvement may be reasonably foreseen.

(8) Ensuring that relevant environmental documentation accompanies all proposals for action through the appropriate review process so that such information is available to the decision maker.

(c) The Chief of Naval Operations and the Commandant of the Marine Corps are to comply with these procedures by subsequently directing subordinates to:

(1) Ensure all appropriate instructions, directives, and orders include the requirement for funding and planning for environmental documentation, as required.

(2) Conduct analyses of the environmental effects of current and proposed actions in accordance with DOD regulations, CEQ regulations (40 CFR parts 1500-1508), and other applicable regulations.

(3) Encourage, to the extent practicable, citizen participation in environmental evaluations of projects or programs.

(4) Evaluate environmental impacts at initial planning stages and at each following significant step or decision milestone in the development of a project or program, as warranted.

#### § 775.5 Classified actions.

(a) The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with NEPA and the CEQ regulations. Therefore, environmental documents shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as appendices so that unclassified portions can be made available to the public. Review of classified NEPA documentation will be coordinated with the Environmental Protection Agency (EPA) to fulfill requirements of section 309 of the Clean Air Act (42 U.S.C. 7609 *et seq.*).

(b) It should be noted that a classified EA/EIS serves the same "informed decisionmaking" purpose as does a published unclassified EA/EIS. Even though the classified EA/EIS does not undergo general public review and

comment, it must still be part of the information package to be considered by the decisionmaker for the proposed action. The content of a classified EA/EIS (or the classified portion of a public EA/EIS) will therefore meet the same content requirements applicable to a published unclassified EA/EIS.

#### § 775.6 Planning considerations.

(a) When integrating the NEPA process into early stages of proposed actions, action proponents will determine as early as possible the appropriate level of documentation required under NEPA, i.e., is the action a major federal action significantly affecting the human environment requiring an environmental impact statement (EIS), is the action one for which the impacts are not known or which may not be significant and, therefore, an environmental assessment (EA), is appropriate, or is the action one that has no potential for significant impacts and can be categorically excluded from further NEPA documentation. In addition, CEQ regulations (40 CFR 1501.5 and 1501.6) require early identification of lead and cooperative agencies for preparation of an EIS for which more than one agency is involved or has special expertise in environmental issues to be addressed in the EIS.

(b) The command responsible for preparation of the appropriate documentation may prepare an EA on any action at any time in order to assist in planning and decisionmaking, including the decision whether or not to prepare an EIS. If a determination is made based on information presented in an environmental assessment that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared and made available to the public in accordance with CEQ regulations (40 CFR 1506.6).

(c) CEQ regulations (40 CFR 1508.18(a)) define major federal actions subject to evaluation under NEPA to include, among other things, "new and continuing activities". The term *new activities* is intended to encompass future actions, i.e., those which are not ongoing at the time of the proposal. The term *continuing activities* which may necessitate the preparation of a NEPA document will be applied by the

Department of Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing training functions, where:

(1) The currently occurring environmental effects of which have not been previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, as a result of ongoing operations (e.g., a discovery that significant beach erosion is occurring as a result of continuing amphibious exercises, new designation of wetland habitat, or discovery of an endangered species residing in the area of the activity), or

(2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use, or in methodology/equipment) which has the potential for significant environmental impacts should be considered a proposal for a new action and be documented accordingly. Preparation of a NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

(d) Where emergency circumstances require immediate action, for the protection of lives and for public health and safety, which could result in significant harm to the environment, the activity Commanding Officer or his designee shall report the emergency action to CNO (OP-44E)/CMC (LFL) who will facilitate the appropriate consultation with CEQ as soon as practicable.

(e) CEQ regulations provide for the establishment of categorical exclusions (40 CFR 1508.4) for those actions which, after consideration by the Department of the Navy, have been found not to have a significant effect on the human environment, individually or cumulatively, under normal circumstances, and for which, therefore, neither an EA nor an EIS is required. Categorical exclusions are applicable to those kinds

of Navy actions which do not significantly affect the quality of the human environment, which do not result in any significant change from existing conditions at the site of the proposed action, and whose effect is primarily economic or social. "Normal circumstances" means that the proposal, when analyzed with respect to context and intensity, can reasonably be expected to not cause significant impacts. Even though a proposal generally fits the description set out below for categorical exclusions, the categorical exclusion should not be used if the proposed action:

(1) Would affect public health or safety;

(2) Involves a site that includes wetlands, endangered or threatened species, historical or archaeological resources, or hazardous wastes;

(3) Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(4) Establishes precedents or makes decisions in principle for future actions with significant effects, or;

(5) Threatens a violation of federal, state or local law or requirements imposed for protection of the environment.

(f) A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions shall be documented, including the exclusions found applicable, the facts supporting their use and specific consideration of whether the exceptions to the use of categorical exclusions, set out above, were applicable. The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA:

(1) Routine personnel, fiscal, and administrative activities involving military and civilian personnel, e.g., recruiting, processing, paying, and records keeping.

(2) Reductions in force wherein impacts are limited to socioeconomic factors.

(3) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new support facilities are required) to per-

form as operational groups, and/or repair and overhaul.

(4) Relocation of personnel into existing federally-owned or commercially-leased space which does not involve a substantial change in the supporting infrastructure (e.g., an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) Studies, data and information-gathering that involve no physical change to the environment, e.g., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising.

(6) Routine repair and maintenance of facilities and equipment in order to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

(7) Alteration of and additions to existing structures to conform or provide conforming use specifically required by new or existing applicable legislation or regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(8) Routine actions normally conducted to operate, protect, and maintain Navy-owned and/or controlled properties, e.g., maintaining law and order, physical plant protection by military police and security personnel, and localized pest management activities on improved and semi-improved lands conducted in accordance with applicable federal and state directives.

(9) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements and constraints, e.g., a building on a parking lot with associated discharges/runoff within existing handling capacities, a bus stop along a roadway, and a foundation pad for portable buildings within a building complex.

(10) Procurement activities that provide goods and support for routine operations.

(11) Day-to-day manpower resource management and research activities that are in accordance with approved plans and inter-agency agreements and which are designed to improve and/or

upgrade Navy ability to manage those resources.

(12) Decisions to close facilities, de-commission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). This paragraph (f)(12) does not apply to permanent closure of public roads.

(13) Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(14) Routine movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations.

(15) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations, including those regulations applying to removal of asbestos, PCBs, and other hazardous materials.

(16) Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distribution systems, and/or facilities.

(17) Renewals and/or initial real estate ingrats and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

(18) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater,

stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(19) Transfer of real property from the Navy to another military department or to another federal agency, and the granting of leases (including leases granted pursuant to the agricultural outleasing program where soil conservation plans are incorporated), permits and easements where there is no substantial change in land use or where subsequent land use would otherwise be categorically excluded.

(20) Disposal of excess easement interests to the underlying fee owner.

(21) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated.

(22) Pre-lease exploration activities for oil, gas or geothermal reserves, e.g., geophysical surveys.

(23) Return of public domain lands to the Department of the Interior.

(24) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use.

(25) Temporary closure of public access to Navy property in order to protect human or animal life.

(26) Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

(27) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

(28) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(29) Installation of devices to protect human or animal life, e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(30) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to

regulation by federal, state, or local organizations having management responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by state authorities pursuant to their state fish and game management laws. With regard to natural resources regulated by another federal agency, the responsible command may cooperate in any environmental analysis that may be required by the other agency's regulations.

(31) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

(32) Routine maintenance of timber stands, including issuance of down-wood firewood permits, hazardous tree removal, and sanitation salvage.

(33) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved.

[55 FR 33899, Aug. 20, 1990, as amended at 55 FR 39960, Oct. 1, 1990]

#### **§ 775.7 Time limits for environmental documents.**

(a) The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of NEPA. Therefore, the NEPA process shall begin as early as possible in the decisionmaking process.

(b) The EPA publishes a weekly notice in the FEDERAL REGISTER of environmental impact statements filed during the preceding week. The minimum time periods set forth below shall be calculated from the date of publication of notices in the FEDERAL REGISTER. No decision on the proposed action may take place until the later of the following dates:

(1) Ninety days after publication of the notice of availability for a draft environmental impact statement (DEIS). Draft statements shall be available to the public for 15 days prior to any pub-

lic hearing on the DEIS (40 CFR 1506.6(c)(2)).

(2) Thirty days after publication of the notice of availability for a final environmental impact statement (FEIS). If the FEIS is available to the public within ninety days from the availability of the DEIS, the minimum thirty day period and the minimum ninety day period may run concurrently. However, not less than 45 days from publication of notice of filing shall be allowed for public comment on draft statements prior to filing of the FEIS (40 CFR 1506.10(c)).

#### **§ 775.8 Scoping.**

As soon as practicable after the decision to prepare an EIS is made, an early and open process called "scoping" shall be used to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

#### **§ 775.9 Documentation and analysis.**

(a) Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

(b) CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for discussion at each level of environmental review (40 CFR 1502.20). Tiering is accomplished



through the preparation of a broad programmatic environmental impact statement discussing the impacts of a wide ranging or long term stepped program followed by narrower statements or environmental assessments concentrating solely on issues specific to the analysis subsequently prepared (40 CFR 1508.28).

(1) *Appropriate use of tiering.* Tiering is appropriate when it helps the lead agency to focus on issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28(b).) The sequence of statements or analyses is:

(i) From a broad program, plan, or policy environmental impact statement (not necessarily site specific) to a subordinate/smaller scope program, plan, or policy statement or analysis (usually site specific) (40 CFR 1508.28(a)).

(ii) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation) (40 CFR 1508.28(b)).

(iii) In addition to the discussion required by these regulations for inclusion in environmental impact statements, the programmatic environmental impact statement shall also discuss:

(A) A description of the subsequent stages or sites that may ultimately be proposed in as much detail as presently possible;

(B) All of the implementing factors of the program that can be ascertained at the time of impact statement preparation;

(C) All of the environmental impacts that will result from establishment of the overall program itself that will be similar for subsequent stages or sites as further implementation plans are proposed; and

(D) All of the appropriate mitigation measures that will be similarly proposed for subsequent stages or sites.

(iv) The analytical document used for stage or site specific analysis subsequent to the programmatic environmental impact statement shall also be an environmental impact statement

when the subsequent tier itself may have a significant impact on the quality of the human environment or when an impact statement is otherwise required. Otherwise, it is appropriate to document the tiered analysis with an environmental assessment to fully assess the need for further documentation or whether a FONSI would be appropriate.

#### **§ 775.10 Relations with state, local and regional agencies.**

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development "clearinghouses". These are agencies which have been established pursuant to Executive Order 12372 of July 14, 1982 (3 CFR, 1982 Comp., p. 197). The clearinghouses serve a review and coordination function for Federal activities and the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. The clearinghouses would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

#### **§ 775.11 Public participation.**

The importance of public participation (40 CFR 1501.4(b)) in preparing environmental assessments is clearly recognized and it is recommended that commands proposing an action develop a plan to ensure appropriate communication with affected and interested parties. The command Public Affairs Office can provide assistance with developing and implementing this plan. In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command:

(a) The magnitude of the environmental considerations associated with the proposed action;

(b) The extent of anticipated public interest; and

(c) Any relevant questions of national security and classification.

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The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

(a) Provide guidelines and procedures for administrative direction and implementation of this part and CEQ regulations; and

(b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

## **PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE SUPERVISION OF THE JUDGE ADVOCATE GENERAL**

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## § 776.1

AUTHORITY: 10 U.S.C. 826, 827; Manual for Courts-Martial, United States, 1984; Secretary of the Navy Instruction 5430.27A, Responsibility of the Judge Advocate General for Supervision of Certain Legal Services; U.S. Navy Regulations, 1990.

SOURCE: 59 FR 45214, Sept. 1, 1994, unless otherwise noted.

### Subpart A—General, Preamble and Premises

#### § 776.1 Purpose.

In furtherance of the authority citations [which, if not found in local libraries, are available from the Office of the Judge Advocate General (Administrative Law Division), 200 Stovall Street, Alexandria, VA 22332-2400], which require the Judge Advocate General (JAG) to supervise the performance of legal services under his cognizance throughout the Department of the Navy (DON), this part is promulgated—

(a) To establish Rules of Professional Conduct for DON civilian and military attorneys practicing under the supervision of JAG;

(b) To promulgate procedures for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, or certified by JAG under articles 26(b) or 27(b) of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 826(b), 827(b)); and

(c) To prescribe limitations on, and procedures for, processing requests to engage in the part-time outside practice of law by DON judge advocates or civilian attorneys under the supervision of JAG.

#### § 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to:

(1) Attorneys:

(i) Certified by JAG under the provisions of article 27(b), UCMJ, 10 U.S.C. 827(b);

(ii) Designated by JAG as legal assistance attorneys;

(iii) Who practice within DON and who are certified under article 27(b), UCMJ, 10 U.S.C. 827(b), or who are designated as a legal assistance attorney by the Judge Advocate General/Chief

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Counsel of another armed force, or both; and

(2) Who are not certified in accordance with article 27(b), UCMJ, 10 U.S.C. 827(b), or designated as a legal assistance attorney, but who practice under the supervision of JAG.

(3) Military trial and appellate judges who practice or perform legal services under the cognizance of JAG.

(4) Reserve judge advocates of the Navy or Marine Corps on active duty, extended active duty, active duty for training, inactive duty for training, or when performing duties subject to the supervision of JAG. Subpart D of this part, however, does not apply to Reserve judge advocates unless they serve on active duty for more than 30 consecutive days.

(5) DON civilian counsel practicing under the supervision of JAG.

(6) Civilian counsel representing individual members of the naval service in any matter for which JAG is charged with supervising the provision of legal services including, but not limited to, courts-martial, administrative boards, and disability evaluation proceedings. Subpart D of this part, however, does not apply to such counsel.

(b) Although subpart B of this part does not apply to nonlawyers, the rules in that subpart do define the type of ethical conduct that the public and the military community have a right to expect not only of lawyers but also of their nonlawyer employees and associates in all matters pertaining to professional conduct. Accordingly, subpart B shall serve as models of ethical conduct for the following personnel when involved with the delivery of legal services under the purview of JAG—

(1) Navy legalmen and Marine Corps legal administrative officers and legal service specialists;

(2) Limited duty officers (law);

(3) Legal interns; and

(4) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court-reporters, and others holding similar positions. Attorneys who supervise nonlawyer employees are responsible for their ethical conduct to the extent provided for in § 776.54.

**§ 776.3 Policy.**

(a) DON judge advocates and civilian attorneys to whom this part applies shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Subpart B and related procedures set forth herein concern matters solely under the purview of JAG. Whether conduct or failure to act constitutes a violation of the duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. The subpart B rules are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Government rules of ethical conduct, the Code of Conduct, the Uniform Code of Military Justice, and the general precepts of ethical conduct to which all officers of the Navy and Marine Corps are expected to adhere. Similarly, action taken pursuant to this part is not supplanted or barred by, and does not supplant or bar, the following action from being taken by authorized officials, even if the underlying misconduct is the same—

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual For Courts-Martial or U.S. Navy Regulations, 1990, or under other applicable authority.

**§ 776.4 Attorney-client relationships.**

(a) The executive agency to which assigned (DON in most cases) is the client served by each DON civilian attorney or judge advocate unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) DON judge advocates and civilian attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority.

(c) Employment of non-DON civilian counsel by an individual client does not alter the responsibilities of a DON

judge advocate or civilian attorney to that client. Specific guidance is set forth in § 776.95.

**§ 776.5 Judicial conduct.**

To the extent that it does not conflict with statutes, subpart B of this part, or regulations of the sort mentioned in § 776.3(b), the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all judge advocates and other attorneys performing judicial functions under JAG supervision within the Department of the Navy.

**§ 776.6 Conflict.**

To the extent that a conflict exists between subpart B of this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, subpart B of this part will govern the conduct of attorneys engaged in legal functions under JAG supervision.

**§ 776.7 Reporting requirements.**

Individuals subject to this part shall promptly report to the Rules Counsel (see § 776.9) discipline by another jurisdiction upon himself, herself, or another individual subject to this part.

**§ 776.8 Professional Responsibility Committee.**

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Principal Deputy Assistant Judge Advocate General (PDAJAG) (Operations & Management); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, Judge Advocate Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be PDAJAG (Operations & Management). The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternative members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory